



What is an injunction?

An injunction is a court order that requires a party to either carry out a specific act (for example to hand over items, documents or information) or refrain from doing a specific act (for example to work for a competing business).

If you are thinking of applying for an injunction, or have been threatened with injunctive proceedings, then it is important to seek legal advice as a matter of urgency. Any delay may prejudice an application for an injunction or result in a court order being made against you.

When can an injunction be obtained?

An injunction is often referred to as the 'nuclear weapon' of litigation and is normally reserved for the most serious cases to prevent irreparable harm being caused. Common examples of where an injunction may be considered include (not an exhaustive list):

- Where there is a significant risk that assets will be dissipated (for example in instances of fraud).
- To prevent the unlawful presentation or advertisement of a winding-up petition.
- To protect a (former) employer's rights (for example to enforce restrictive covenants which prohibit an employee working for a competitor).
- To protect intellectual property rights.
- To protect interests in property (for example rights to light, trespass or nuisance.)

When will an injunction be granted?

The court will only grant an injunction after a careful analysis of the facts and where it is 'just and convenient' to do so. Some of the key issues that will be considered are:

- Is there a serious question to be tried? Injunctions will not normally be granted if the wrongdoing complained of is trivial in nature.
- The balance of convenience. An injunction will not normally be granted if:
- The injunction would cause more harm than the damage complained of; or
- Damages would be a suitable remedy to compensate for the loss suffered.

The court will be wary of granting an injunction where there is limited evidence or where the underlying facts have been brought into question.

If there has been any delay in applying for the injunction this may count against the applicant.

Extra scrutiny will be applied by the court if the relief would effectively determine the issue in dispute. For example, if the court acts to restrict competition by enforcing a time limited restrictive covenant there may not be sufficient time for this matter to be heard before the time limit expires.

In these circumstances every effort will be made to list a speedy trial, but if this will not be possible, the court will be careful to take the course of action which will cause the least injustice to the parties.

Interim injunctions

The court may grant an injunction on an interim basis before all the facts have been considered at trial. The injunction will then be confirmed at trial or overturned.

Applying for such an injunction can be risky because as a pre-condition of any order being made the court will normally require the applicant to undertake to pay any damages the respondent suffers if it is later found that the injunction should not have been granted. This is known as a 'cross-undertaking in damages'.

The applicant will typically be required to provide evidence of their assets at the hearing and if there is doubt about their ability to meet this undertaking, some form of security may be required (for example a payment into court, or funds held in a solicitor's client account).

Without notice or short notice

It is a fundamental principle of natural justice that both sides should be given an opportunity to set out their case, however, this may not be possible in injunctive proceedings. An application is made 'on notice' if a sealed application notice is served on the respondent (along with any supporting evidence) at least three clear days prior to the hearing.

If notice is not given then this will need to be justified by the applicant. Even if the application must be made urgently the court will expect the defendant to be informed of the hearing, unless it is inappropriate to do so (for example, where the applicant is seeking the freezing of a bank account to prevent dissipation of assets).

Full and frank disclosure

Where an application is made without notice the court will expect the applicant to give full and frank disclosure. This means that the applicant is under a duty to present both sides of their case and highlight any evidence that



does not correspond with their narrative.

If an injunction is made, the applicant will be required to serve the order and any supporting documentation on the respondents as soon as possible after the hearing, together with a transcript of the hearing.

This means that the respondent will become aware of any weaknesses the applicant feels they have with their case and which were disclosed to the court as part of their full and frank disclosure.

Return date

If an application is made without formal notice a return date (a further hearing) will be listed so that the respondent may make representations to the court. At that hearing the order will then be continued (pending trial), varied or discharged based on the evidence that is produced to the court.

Challenging an injunction

The basis of any challenge will depend on the facts of the case, but a respondent may seek to challenge an injunction on procedural grounds, such as:

- The applicant has not complied with its obligation of full and frank disclosure.
- There has been undue delay before the application was made.
- The cross-undertaking in damages is insufficient.
- The order is too wide for the harm that is complained of.
- Damages would be an adequate remedy and an injunction would be disproportionate in the circumstances.

Undertakings in lieu of an injunction

To avoid an injunction being made the respondent may offer undertakings equivalent to any order that may be sought. The applicant should also consider whether it would be appropriate to request these undertakings in correspondence before making an application to court.

Breach of an injunction / undertaking to court

A form of words known as a 'penal notice' will normally be given at the top of the court order granting an injunction. This means that a breach of the terms of the order by the respondent, or any third party with notice of the order, is a contempt of court.

The penalties for contempt of court include imprisonment so any order that contains an injunction / penal notice needs to be taken seriously.

How we can help

If you require further information on this topic then please contact our [commercial dispute resolution team](#).

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